

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Unlicensed
Residential Mortgage Originator
Activities of Certified Financial
Protection Group, LLC; SafeHouse
911, LLC, d/b/a SafeHouse
Professional Mortgage Restructuring;
and Michael Wayman, individually.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Kathleen D. Sheehy on October 19, 2010, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). Certified Financial Protection Group, LLC (SFPG); SafeHouse 911, LLC, d/b/a SafeHouse Professional Mortgage Restructuring (SHP); and Michael Wayman (collectively Respondents) did not appear in person or by counsel. The record closed upon the Respondent's default on October 19, 2010.

STATEMENT OF ISSUES

Are the Respondents subject to discipline because:

1. SHP engaged in unlicensed residential mortgage origination activities in Minnesota, in violation of Minn. Stat. §§ 58.02, subds. 19 and 23; 58.04, subds. 1 and 3; and 58.12, subd. 1(b)(2)(i) (2008 and Supp. 2009);
2. SHP and Wayman engaged in mortgage modification activities when they were subject to a cease and desist order precluding them from engaging in any acts requiring a real estate license in California, in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii);
3. CFPG engaged in unlicensed residential mortgage origination activities in Minnesota, in violation of Minn. Stat. §§ 58.02, subds. 19 and 23; 58.04, subds. 1 and 3; and 58.12, subd. 1(b)(2)(i);
4. Respondents collected fees in Minnesota in violation of Minnesota law, and CFPG failed to provide refunds, failed to include mandatory contract

language, and violated their fiduciary relationship with consumers, demonstrating incompetence, financial irresponsibility, or untrustworthiness, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(2) and (4); 58.12, subd. 1(b)(2)(i), (iv), and (v); 58.13, subd. 1(a)(1)-(2); and 58.16;

5. CFPG and Wayman provided incomplete information to the Commissioner and have refused to allow a reasonable inspection of records in response to an administrative subpoena, in violation of Minn. Stat. § 45.027, subd. 7(a)(3); and

6. CFPG engaged in deceptive or dishonest practices, in violation of Minn. Stat. §§ 58.12, subd. 1(b)(2)(iv); 58.13, subd. 1(a)(9).

Based upon the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 13, 2010, a copy of the Notice and Order for Prehearing Conference was sent by first-class mail to the Respondents and counsel for CFPG.¹

2. The Respondents failed to appear at the prehearing conference, did not obtain prior approval from the Administrative Law Judge to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice and Order for Prehearing Conference contained the following notice:

Respondents' failure to appear at the prehearing conference . . . may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondents may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.²

4. Because Respondents failed to appear at the prehearing conference, they are in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

¹ Affidavit of Service by First Class Mail (September 13, 2010).

² Notice and Order for Prehearing Conference at 7.

6. The Statement of Charges alleges that the Respondents are unlicensed and are not exempt from licensure in Minnesota; that Michael Wayman is the president and CEO of CFPG and the owner of SHP; that in March 2009 the California Department of Real Estate ordered SHP and Wayman, among others, to cease and desist from engaging in any acts requiring a real estate license in California based on their unlicensed mortgage modification activities in that state; that SHP has advertised in Minnesota and has solicited and obtained mortgage modification business from Minnesota resident T.H.; that CFPG has engaged in the mortgage modification business with Minnesota residents R.S., B.S., and A.C.; and that CFPG and Wayman have failed to respond to an administrative subpoena issued by the Department in May 2010.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 58.12, 45.027, subd. 1, 45.024, and 14.50.

2. Respondents received due, proper, and timely notice of the charges against them, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondents are in default herein as a result of their failure, without the prior consent of the Administrative Law Judge, to appear at the prehearing conference.

6. Assisting or offering to assist a borrower in applying for a residential mortgage loan, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower, for compensation or gain or expectation of compensation or gain, is activity that constitutes mortgage brokering, and it requires a residential mortgage originator license in Minnesota.³

³ Minn. Stat. §§ 58.02, subds. 13, 19, & 23; 58.04, subd. 1(a) (2008 and Supp. 2009).

7. SHP engaged in unlicensed residential mortgage origination activities by entering into an agreement with Minnesota resident T.H. to modify his residential mortgage loan. SHP is subject to discipline under Minn. Stat. § 58.12, subd. 1(a) and 1(b)(2)(i) (Count I).

8. SHP and Wayman are subject to discipline in Minnesota under Minn. Stat. § 58.12, subd. 1(b)(2)(vii), because they engaged in unlicensed residential mortgage origination activities in Minnesota at a time when they were subject to a cease and desist order in California that barred them from engaging in any acts requiring a real estate license in California (Count II).

9. CFPG engaged in unlicensed residential mortgage origination activities by entering into agreements with Minnesota residents R.S., B.S., and A.C. to modify their residential mortgage loans. CFPG is subject to discipline under Minn. Stat. § 58.12, subd. 1(a) and 1(b)(2)(i) (Count III).

10. A residential mortgage originator who negotiates or offers to negotiate the terms or conditions of an existing residential mortgage loan is precluded from receiving any compensation until after the contract has been fully performed.⁴ Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in Minnesota in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower in obtaining a loan secured by such a lien, shall be considered to have created a fiduciary relationship with the borrower.⁵ The terms of any such contract are subject to disclosure requirements and cancellation rights described in Minn. Stat. § 58.16, subds. 2 and 3.

11. Respondents collected advance fees from Minnesota residents, failed to include mandatory language in their contracts with Minnesota residents, and failed to comply with their fiduciary responsibilities, in violation of Minn. Stat. §§ 325N.04(1) and 58.16, subds. 2 and 3. This conduct demonstrates incompetence, financial irresponsibility, or untrustworthiness, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(2); 58.12, subd. 1(b)(2)(i), (iv), and (v) (Count IV).

12. Persons subject to the authority of the Commissioner of Commerce must comply with requests for information, documents, or other requests from the department within the time specified in the request, or, if no time is specified, within 30 days of the mailing of the request by the department.⁶ The Commissioner may take disciplinary action against a person who has provided incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises.⁷

⁴ Minn. Stat. §§ 325N.01(b)(8); 325N.04(1).

⁵ Minn. Stat. § 58.16, subd. 1.

⁶ Minn. Stat. § 45.027, subd. 1a.

⁷ Minn. Stat. § 45.027, subd. 7(a)(3).

13. CFPG and Wayman have refused to allow a reasonable request to inspect records pursuant to an administrative subpoena, in violation of Minn. Stat. § 45.027, subd. 7(a)(3) (Count V).

14. A residential mortgage originator shall not make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction, including a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product.⁸

15. By instructing a Minnesota resident to stop making payment on his mortgage, CFPG engaged in deceptive or dishonest practices in violation of Minn. Stat. §§ 58.13, subd. 1(a)(9), and 58.12, subd. 1(B)(2)(IV) (Count VI).

16. Disciplinary action against the Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take adverse action against the Respondents.

Dated: October 27, 2010

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (not recorded)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

⁸ Minn. Stat. §§ 58.13, subd. 1(a)(9); 58.12, subd. 1(b)(2)(iv).

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.